

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
CURTIS D. AND PATRICIA L. STEPHAN)

For Appellants: Curtis D. Stephan,
 in pro. per.

For Respondent: James T. Philbin
 Supervising Counsel

O P I N I O N

This appeal is made pursuant to section 18593
'of the Revenue and Taxation Code from the action of the
Franchise Tax Board on the protest of Curtis D. and
Patricia L. Stephan against a proposed assessment of
additional personal income tax in the amount of \$35.06
for the year 1975.

Appeal of Curtis D. and Patricia L. Stephan

The sole issue presented by this appeal is whether respondent properly determined that **appellants** were not entitled to the child care deduction claimed on their 1975 joint California personal income tax return.

Respondent initially disallowed appellants' claimed child care deduction on the basis of a **federal** audit; the subject proposed assessment was subsequently issued. Appellants protested respondent's action claiming that they were entitled to the claimed deduction because, even though not gainfully employed **during** the appeal year, Mrs. **Stephan** had actively sought **full-time** employment. Upon consideration of appellants' **protest**, respondent affirmed its proposed assessment, thereby resulting in this appeal.

During the year in issue, former Revenue and Taxation Code section 17262 provided+ for the **subject** deduction **provided that**, among other limitations, married taxpayers: (1) file a joint return; and (2) that "[b]oth spouses [be] gainfully eniployed on a substantially full-time basis, ..." (Former Rev. & Tax. Code, § 17262, subd. (e), repealed by Stats. 1977, Ch. 1079, operative for taxable years beginning in 19'17.) While we appreciate the sincerity and **forcefulness** w-with which **appellants** have advanced their argument,, we are nevertheless bound by the applicable provisions of the Revenue and Taxation Code. Dependent care expenses were deductible only in accordance with the specific **requirements** set forth in former section 17262. Since Mrs. **Stephan** was not employed during the appeal year, it is evident that appellants were not entitled to the subject claimed deduction.

For the reasons set forth above, respondent's action in this matter will be sustained.

Appeal of Curtis D. and Patricia L. Stephan

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Curtis D. and Patricia L. **Stephan** against a proposed assessment of additional personal income tax in the amount of \$35.06 for the year 1975, be and the same is hereby sustained.

Done at Sacramento, California, this 1st day of March , 1983, by the State Board of Equalization, with Board **Members** Mr. **Dronenburg**, Mr. Collis, Mr. Nevins and Mr. Harvey present.

_____, Chairman
Ernest J. Dronenburg, Jr., Member
Conway H. Collis, Member
Richard Nevins, Member
Walter Harvey*, Member

*For Kenneth Cory, per Government Code Section 7.9